

ESTTA Tracking number: **ESTTA732931**

Filing date: **03/11/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91225405
Party	Defendant Philip Tricca
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Submission	Motion to Amend Application
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Date	03/11/2016
Attachments	Motion_To_Amend_TM_Application.pdf(42650 bytes)

Filing date: **03/10/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

**Motion to Amend Application
with Consent of Opposer**

PROCEEDING NO. 91225405

Application Information

Application No.	86579021
Publication Date	8/18/2015
Opposition Filing Date	12/16/2015
Answer Due Date	3/25/2016: Extended by Stipulation /TTAB Grant of Motion
Address/Correspondence Information	PHILIP TRICCA 1000 ESCALON AVE #K1085 SUNNYVALE, CA 94085 UNITED STATES kcooper@dlphlaw.com lperez@dlphlaw.com Phone: 978-766-5515

Applicant's Mark

Word Mark	OpenXT
Goods/Services	IC 009. First Use in Commerce 06/12-2014 Computer operating systems; Computer utility programs

Motion to Amend Application

Notice is hereby given that **Applicant hereby moves to Amend its Application**. This motion is based upon the **stipulation of the parties** hereto and the **consent** of the Opposer (identified below). This Motion to Amend is based upon the Applicant's agreement to **limit** the description of its goods and services as follows:

Existing description of Goods & Services	Computer operating systems; Computer utility programs
Stipulated description of goods and services (Red-lined version)	Computer operating systems; Computer utility programs, <u>namely, software for use as a toolkit to develop, test, configure, secure, run, virtualize, manage and monitor operating systems and their user workflows.</u>
"Clean" description of goods & service	Computer operating systems; Computer utility programs, namely, software for use as a toolkit to develop, test, configure, secure, run, virtualize, manage and monitor operating systems and their user workflows

Pursuant to TTAB Procedure, Section 514, Motion to Amend Application (37 CFR § 2.133), an application subject to an opposition may not be amended in substance *except with the consent of the other party* or parties and the approval of the Trademark Trial and Appeal Board, or upon motion granted by the Board.

In this case, under 37 CFR § 2.72, the proposed amendment does not materially alter the mark. Rather, as noted in the description above, it merely serves to **limit** the mark

Pursuant to TTAB Procedure, Section 514.02, this is an Amendment With Consent of the other party, and the proposed amendment is in accordance with the applicable rules and statutory provisions. It does not expand or alter the mark but, rather, merely limits it.

For these reasons, Applicant, based upon the stipulation of the opposing party hereto, whose information is set forth below, hereby moves to allow for the above-described amendment to its Trademark Application.

Opposer Information

Name	Open Text SA
Address	40 Avenue Monterey Luxembourg, L-2163 Luxembourg
Correspondence Information	Kate E. Hart / Alison Levasseur Attorneys, Dentons US LLP 4520 Main Street, Suite 1100 Kansas City, MO 64111-7700 UNITED STATES kate.hart@dentons.com, frank.benjamin@dentons.com, mlaip@dentons.com, alison.levasseur@dentons.com Phone: 816-460-2456

Goods/Services Affected by Opposition:

Class 009. First Use: 2014/06/12 First Use In Commerce: 2014/06/12
All goods and services in the class are opposed, namely: **Computer operating systems; Computer utility programs**

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

US Registration No.	4103524	Application Date	3/23/2010
Registration Date	02/28/2012	Foreign Priority	None
Word Mark	OPEN TEXT THE CONTENT EXPERTS		
Design Mark	OPEN TEXT THE CONTENT EXPERTS		
Description	NONE		
Goods/Services	Class 009. First use: First Use: 2007/11/01 First Use In Commerce: 2007/11/01		

	<p>Computer software for use in document, records, data and content management and collaboration; computer software for use in document, records, data and content management and collaboration that may be downloaded from a global computer network; enterprise software in the nature of a database for non transactional data and a search engine for database content; computer software for web content management and web site creation</p> <p>Class 042. First use: First Use: 2007/11/01 First Use In Commerce: 2007/11/01 Application service provider (ASP) featuring software for use in document, records, data and content management and collaboration; application service provider(ASP) featuring software for use in document, records, data and content management and collaboration that may be downloaded from a global computer network; application service provider (ASP) featuring enterprise software in the nature of a database for non-transactional data anda search engine for database content; application service provider (ASP) featuring software for web content management and web site creation</p>
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US Registration No.	4107240	Application Date	03/23/2010
Registration Date	03/06/2012	Foreign Priority	None

Word Mark	OPEN TEXT THE CONTENT EXPERTS
Design Mark	OPEN TEXT THE CONTENT EXPERTS
Description	NONE

Goods/Services	<p>Class 009. First use: First Use: 2007/11/01 First Use In Commerce: 2007/11/01 Computer software for the collection, editing, organizing, modifying, book marking, transmission, storage and sharing of data and information; database management software; computer software to automate data warehousing: computer software for archiving databases, images and other electronic data; computer software for business process management; computer software for digital asset management; computer software for e-mail management; computer software for document processing; computer software for organizing and viewing digital images and photographs; computer software for accessing, searching, indexing, and retrieving data from networked computers; computer software for sharing and distributing data, documents and information: computer software that facilitates collaboration through the sharing and distributing data, documents and information; computer software for use in providing a document retrieval system for businesses; computer software used by businesses to facilitate compliance with laws and regulations; and computer software used by businesses to facilitate compliance with internal governance requirements</p> <p>Class 042. First use: First Use: 2007/11/01 First Use In Commerce: 2007/11/01 Computer software consultation; consultation services in the fields of selection, implementation and use of computer hardware and software systems for others; computer consultation; computer consultation in the field of computer security; Customization of computer hardware and software; design, development,</p>
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	<p>implementation, updating and maintenance of software; technical support services, namely, troubleshooting of computer software problems; computer service, namely, acting as an application service provider in the field of knowledge management to host computer application software for creating searchable databases of information and data and for searching and retrieving information from databases and computer networks, and for the collection, editing, organizing, modifying, book marking, transmission, storage and sharing of data and information; computer services, namely, remote management of computer applications for others; application service provider (ASP) featuring software for the collection, editing, organizing, modifying, bookmarking, transmission, storage and sharing of data and information; application service provider (ASP) featuring database management software; application service provider (ASP) featuring software to automate data warehousing; application service provider (ASP) featuring software for archiving databases, images and other electronic data, application service provider (ASP) featuring software for business process management; application service provider (ASP) featuring software for digital asset management; application service provider (ASP) featuring software for e-mail management; application service provider (ASP) featuring software for document processing; application service provider (ASP) featuring software for organizing and viewing digital images and photographs; application service provider (ASP) featuring software for accessing, searching, indexing, and retrieving data from networked computers; application service provider (ASP) featuring software for sharing and distributing data, documents and information; application service provider (ASP) featuring software that facilitates collaboration through the sharing and distributing data, documents and information; application service provider (ASP) featuring software for use in providing a document retrieval system for businesses; application service provider (ASP) featuring software used by businesses to facilitate compliance with laws and regulations; and application service provider (ASP) featuring software used by businesses to facilitate compliance with internal governance requirements</p>
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U.S. Registration No.	1773909	Application Date	10/25/1991
Registration Date	05/25/1993	Foreign Priority Date	NONE

Word Mark	OPENTEXT
Design Mark	
Goods/Services	<p>Class 009. First use: First Use: 1991/10/15 First Use In Commerce: 1991/10/15</p> <p>computer software for use in providing a documentary retrieval system which utilizes conversational terms to retrieve relevant information and which adheres to open systems interconnect standards</p>

U.S. Registration No.	2685043	Application Date	02/27/1997
Registration Date	02/11/2003	Foreign Priority Date	NONE

Word Mark	OPENTEXT
Design Mark	
Goods/Services	<p>Class 009. First use: First Use: 1989/12/11 First Use In Commerce: 1989/12/11</p>

	computer software for accessing, searching, indexing, and retrieving data from networked computers, data management and distribution, collaboration, web-site creation
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail and electronic mail.

Signature: /Keith Cooper/

Name: Keith Cooper

Date March 10, 2016